

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES OF AMERICA

v.

ANTONIO SERNA,

Defendant.

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Case No. 3:20-CR-00170-E

UNOPPOSED MOTION TO TRANSFER CASE

Defendant Antonio Serna, by and through undersigned counsel, hereby files this Unopposed Motion to transfer or reassign this case to Chief Judge Barbara M.G. Lynn under Local Rule 57.3, and in support thereof states as follows:

On April 29, 2020, the government instituted this case against Mr. Serna based upon a one-count information charging Mr. Serna with violation of 18 U.S.C. § 1347. [D.E. 1]. On the same day, Mr. Serna, his counsel, and the government filed both a factual resume setting forth the facts underlying the offense [D.E. 2], and a plea agreement pursuant to which Mr. Serna agreed to plead guilty to the single count in the information, conspiracy to commit health care fraud. [D.E. 3]. In the factual resume, Mr. Serna admits to, *inter alia*, receiving kickbacks for referring TRICARE beneficiaries to a certain compounding pharmacy.

Separately, Mr. Serna is a cooperating witness in a similar case pending before Judge Lynn, *U.S. v. Cesario, et al.*, Case No. 3:16-cr-00060-M. The Cesario case stems from an indictment initially returned on February 18, 2016, and the government ultimately charged thirteen defendants

with conspiracy to commit health care fraud. Some of the defendants were also charged with various counts of substantive health care fraud. Like this case, the underlying conduct in the *Cesario* case involves allegations of defrauding TRICARE in connection with compounded drugs. After a trial in the fall of 2019, the jury returned a verdict against some, but not all, of the defendants on December 19, 2019. On December 20, 2019, the government gave notice of its intent to retry two of the defendants for whom the jury was unable to reach a verdict, Dr. Walter Neil Simmons and Dr. William F. Elder-Quintana. Assistant U.S. Attorney Douglas Brasher is one of the prosecuting attorneys in both *Cesario* and in this case against Mr. Serna. The government may call upon Mr. Serna to testify against Drs. Simmons and Elder-Quintana in their upcoming trial or trials.

Counsel for Mr. Serna anticipates that Mr. Serna's cooperation and testimony in the *Cesario* case will be an important mitigating factor to be argued and considered in his upcoming sentencing. Because Judge Lynn has presided over the *Cesario* case for over four years and is well-acquainted with the facts, testimony, and arguments in that case, and because Judge Lynn will hear Mr. Serna's testimony at the upcoming trial or trials of the remaining defendants, Judge Lynn would be in the best position to weigh Mr. Serna's cooperation in order to impose a fair and appropriate sentence within the bounds of justice. By comparison, because Mr. Serna has pled guilty to the information in this case, this Court has not needed to expend substantial resources on this matter. Learning all of the facts underlying the *Cesario* case in order to evaluate the value of Mr. Serna's cooperation and assistance would not be the best use of this Court's resources when another judge in this division already has that underlying factual knowledge. For these reasons, and with the consent of the government, Mr. Serna requests that this Court transfer his case to

Judge Lynn for any further proceedings in this case, including sentencing. A courtesy copy of this motion will be provided to Judge Lynn's chambers upon its filing.

DATED: May 11, 2020

OBERHEIDEN, P.C.

/s/ Elizabeth K. Stepp

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ATTORNEYS FOR DEFENDANT

ANTONIO SERNA

CERTIFICATE OF CONFERENCE

I hereby certify that on May 4, 2020, I conferred with AUSA Douglas Brasher regarding the substance of this motion and was informed that the government does not object to the relief sought herein.

/s/ Elizabeth K. Stepp

Elizabeth K. Stepp

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2020, a true and correct copy of the above and foregoing instrument was served electronically on all counsel of record via ECF.

/s/ Elizabeth K. Stepp

Elizabeth K. Stepp